

## **EXECUTION ON A JUDGMENT**

### **JUDGMENT AGAINST AN INDIVIDUAL**

The procedure on execution shall be in accordance with the practice and procedure of the state in which the district court is held (Rule 69(a) F.R.C.P.). A judgment creditor may file a pre-execution demand after ten (10) days from the entry of the judgment.

The pre-execution demand consists of:

1. NOTICE OF RIGHT TO HAVE EXEMPTIONS DESIGNATED.
2. SCHEDULE OF DEBTOR'S PROPERTY AND REQUEST TO SET ASIDE EXEMPT PROPERTY.
3. MOTION TO CLAIM EXEMPT PROPERTY (Constitutional Exemptions).

The three (3) documents as set out above are to be served on the judgment debtor. The judgment creditor prepares the forms to be submitted with an extra copy of each to the Clerk of Court. The Clerk will issue the Notice of right to set off debtor's exempt property, file-stamp the original notice which will be retained in the court's case file. Copies of this notice will be returned to the judgment creditor for service on the judgment debtor along with 1) Schedule Of Debtor's Property & Request To Set Aside Exempt Property and 2) Motion to Claim Exempt Property forms.

#### **SCHEDULE OF PROPERTY/REQUEST TO SET ASIDE EXEMPT PROPERTY FILED:**

The judgment debtor has twenty (20) days to file either form, an executed Schedule Of Property & Request To Set Aside Exempt Property or the Motion to Claim Exempt Property. The Schedule or Motion will be forwarded to a Magistrate Judge for consideration and entry of an order thereon.

After exemptions, if any, are designated by the Magistrate Judge, the judgment creditor may proceed with a Writ of Execution. The Writ should be submitted to the Clerk for issuance.

The issued Writ of Execution should be accompanied by:

- Two (2) certified copies of the judgment.
- Two (2) certified copies of the order designating exemptions.
- Original and one copy of the issued Writ of Execution form.
- Completed U.S. Marshals Service Form USM-285.

This package will be returned to the judgment creditor to make arrangements with the United States Marshal's Office for execution of the property.

## FAILURE TO FILE SCHEDULE OF PROPERTY/REQUEST TO SET ASIDE EXEMPT PROPERTY OR MOTION TO CLAIM EXEMPT PROPERTY:

In the event a judgment debtor fails to file the schedule or motion within the time prescribed, the judgment creditor should submit for filing the following:

1. MOTION FOR FINAL EXECUTION AND ORDER TO PRECLUDE EXEMPT PROPERTY RIGHTS.
2. PROPOSED FORM OF ORDER FOR FINAL EXECUTION AND PRECLUSION OF EXEMPT PROPERTY.

After execution of the Order, the judgment creditor may submit the Writ of Execution to be issued by the Clerk.

The issued Writ of Execution should be accompanied by:

- Two (2) certified copies of the judgment.
- Two (2) certified copies of the Order for Final Execution and Preclusion of Exempt Property.
- Original and one copy of the issued Writ of Execution form.
- Completed U.S. Marshals Service Form USM-285.

This package will be returned to the judgment creditor to make arrangements with the United States Marshal's Office for execution of the property.

## **JUDGMENT AGAINST A CORPORATION**

If a judgment is to be executed in this district, the judgment creditor may proceed with a Writ of Execution ten (10) days after the judgment is entered. The proposed Writ of Execution form should be submitted for issuance to the Clerk of Court. The Writ should be accompanied by the following:

- Two (2) certified copies of the judgment.
- Original and one copy of the issued Writ of Execution form.
- Completed U.S. Marshals Service Form USM-285.

This package will be returned to the judgment creditor to make arrangements with the United States Marshal's Office for execution of the property.

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

File No.

Name Of Plaintiff

VERSUS

Name Of Defendant

**NOTICE OF RIGHT TO  
HAVE EXEMPTIONS  
DESIGNATED**

G.S. 1C-1603

TO:

Name And Address Of Judgment Debtor 1

TO:

Name And Address Of Judgment Debtor 2

A judgment has been entered against you in the case captioned above in which you have been ordered to pay money over turn over various household belongings to the judgment creditor.

The judgment creditor (person who has the judgment against you) is now seeking to collect this judgment and has asked me to give you notice of your rights. Under the Constitution and laws of North Carolina, you have the right to exempt from the collection of the judgment certain of your property (in other words, to keep it from being taken from you). If you wish to keep your exempt property, you MUST fill out the attached Debtor's Schedule To Claim Exempt Property and request to set property aside and mail or take it to the U.S. District Court Clerk at the address listed below. You MUST also mail or take a copy to the judgment creditor at the address listed below. The law gives you another option of requesting, in writing, a hearing before the Court to claim your exemptions. If you make a written request for a hearing, you will be notified of the time and place of the hearing when you may claim your exemptions.

It is important that you respond to this Notice no later than twenty (20) days after it was served on you because you will lose valuable statutory rights if you do nothing. If you do not respond, you will give up your right to statutory exemptions and the judgment creditor may be able to take any or all of your property to satisfy the judgment. You have certain constitutional rights you may claim if you give up your statutory rights. You may wish to consider hiring an attorney to help you with this proceeding to make certain that you receive all the protections to which you are entitled.

Name And Address Of Judgment Creditor Or Attorney

Date

Signature

☐ Deputy Clerk

Address Of The Clerk

Telephone No.

**NOTICE TO THE JUDGMENT CREDITOR:**

You may serve this Notice and the Motion To Claim Exempt Property by mailing a copy of each, registered or certified mail, return receipt requested, addressed to the judgment debtor. To prove service, you must file an affidavit (notarized by a notary public) with the Clerk asserting that (1) a copy of the notice of rights and Motion To Claim Exempt Property was deposited in the post office for mailing by registered or certified mail, return receipt requested; (2) it was in fact received as evidenced by the attached registry receipt or other evidence of delivery; and (3) the genuine receipt or other evidence of delivery is attached. You must attach the post office delivery receipt to the affidavit. Alternatively, you may choose to have this Notice and the motion served by the U.S. Marshal. If you select this method, you must pay a service fee. The Marshal's service will be proved by the Marshal's return. If your attempted service by certified or registered mail or personal service by the Marshal fails, you may then serve the judgment debtor by mailing a copy of notice and motion to the judgment debtor at his/her last known address. To prove service, you must file a certificate with the Clerk that the notice and motion were served indicating why you used such service, the date the notice was mailed and the address to which it was mailed. Remember, you may NOT use service by regular first class mail until you have tried first to serve the judgment debtor personally or by certified or registered mail and such service was unsuccessful.

**RETURN OF SERVICE**

I certify that this Notice and a copy of a motion to claim exempt property were received and served as follows:

**JUDGMENT DEBTOR 1***Date Served**Name Of Judgment Debtor 1*

- ☐ By delivering to the judgment debtor named above a copy of this Notice and Motion To Claim Exempt Property.
- ☐ By leaving a copy of this Notice and Motion To Claim Exempt Property at the dwelling house or usual place of abode of the judgment debtor named above with a person of suitable age and discretion then residing therein.

*Name And Address Of Person With Whom Copies Left*

☐ Other Manner Of Service (*specify*)

☐ Judgment debtor WAS NOT served for the following reason:

*Service Fee Paid**Date Received**Name Of Process Server*

\$

*Paid By**Date Of Return**County**Person Making Return***JUDGMENT DEBTOR 2***Date Served**Name Of Judgment Debtor 2*

- ☐ By delivering to the judgment debtor named above a copy of this Notice and Motion To Claim Exempt Property.
- ☐ By leaving a copy of this Notice and Motion To Claim Exempt Property at the dwelling house or usual place of abode of the judgment debtor named above with a person of suitable age and discretion then residing therein.

*Name And Address Of Person With Whom Copies Left*

☐ Other Manner Of Service (*specify*)

☐ Judgment debtor WAS NOT served for the following reason:

*Service Fee Paid**Date Received**Name Of Process Server*

\$

*Paid By**Date Of Return**County**Person Making Return*

(TYPE OR PRINT IN BLACK INK)

File No.

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Name Of Judgment Creditor (Plaintiff)

VERSUS

Name Of Judgment Debtor (Defendant)

**SCHEDULE OF DEBTOR'S PROPERTY  
& REQUEST TO SET ASIDE EXEMPT PROPERTY  
(STATUTORY EXEMPTIONS)**

G.S. 1C-1603(c)

I, the undersigned, move to set aside the property claimed below as exempt.

1. I am a citizen and resident of \_\_\_\_\_.

2. ☐ a. I am married to \_\_\_\_\_.  
☐ b. I am not married.

3. My current address is \_\_\_\_\_.

4. The following persons are dependent on me for support:

Name(s) Of Person(s) Dependent On Me	Age	Relationship

5. I wish to claim as exempt (*keep from being taken*) my interest in the following real or personal property that I use as a residence. I also wish to claim my interest in the following burial plots for myself or my dependents. I understand that my total interest claimed in the residence and burial plots may not exceed \$10,000.00.

Street Address Of Residence

County Where Property Located

Township

No. By Which Tax Assessor Identifies Property

Legal Description (Attach a copy of your deed or other instrument of conveyance or describe property in as much detail as possible. Attach additional sheets if necessary.)

Name(s) Of Owner(s) Of Record Of Residence

Estimated Value Of Residence (What You  
Think You Could Sell It For)

\$

**Amount Of Lien(s) And Name(s) And Address(es) Of Lienholder(s):**  
(How much money is owed on the property and to whom)

**Current Amount Owed**

Location Of Burial Plots Claimed

Value Of Burial Plots Claimed

\$

**NOTE TO DEBTOR (DEFENDANT):** The Clerk of Court cannot fill out this form for you. If you need assistance, you should talk with an attorney.

6. I wish to claim the following personal property consisting of household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments as exempt from the claims of my creditors (*in other words, keep them from being taken from me*). These items of personal property are held primarily for my personal, family or household use.

I understand that I am entitled to personal property worth the sum of \$3,500.00. I understand I am also entitled to an additional \$750.00 for each person dependent upon me for support, but not to exceed \$3,000.00 for dependents. I further understand that I am entitled to this amount after deducting from the value of the property the amount of any valid lien or security interest. Property purchased within ninety (90) days of this proceeding is not exempt. (*Some examples of household goods would be TV, appliances, furniture, clothing, radios, record players.*)

Item Of Property	Fair Market Value (What You Could Sell It For)	Amount Of Lien Or Security Interest (Amount Owed On Property)	Name(s) Of Lienholder(s) (To Whom Money Is Owed)	Value Of Debtor's (Defendant's) Interest (Fair Market Value Less Amount Owed)
	\$	\$		\$
	\$	\$		\$
	\$	\$		\$

7. I wish to claim my interest in the following motor vehicle as exempt from the claims of my creditors. I understand that I am entitled to my interest in one motor vehicle worth the sum of \$1,500.00 after deduction of any valid liens or security interests. I understand that a motor vehicle purchased within ninety (90) Days of this proceeding is not exempt.

Make And Model	Year	Name Of Title Owner Of Record
Fair Market Value (What You Could Sell It For)	Name Of Lienholder(s) Of Record (Person(s) To Whom Money Is Owed)	
\$		
Amount Of Liens (Amount Owed)	Value Of Debtor's (Defendant's) Interest (Fair Market Value Less Amount Owed)	
\$	\$	

8. (This item is to claim any other property you own that you wish to exempt.) I wish to claim the following property as exempt because I claimed residential or real property as exempt that is worth less than \$3,500.00, or I made no claim for a residential exemption under section (5) above. I understand that I am entitled to \$3,500.00 in any property only if I made no claim under section (5) above and that if I make a claim under section (5), that I am entitled to \$3,500.00 in any property minus any amount I claimed under section (5). (*Examples: claim of \$1,000.00 under section (5), \$2,500.00 allowed here; claim of \$3,600.00 under section (5), no claim under section (5), \$3,500.00 in any property allowed here.*) I further understand that the amount of my claim under this section is after the deduction from the value of this property of the amount of any valid lien or security interests and that tangible personal property purchased within ninety (90) days of this proceeding is not exempt.

Item Of Personal Property Claimed	Fair Market Value	Amount Of Lien(s)	Name(s) Of Lienholder(s)	Value Of Debtor's (Defendant's) Interest
	\$	\$		\$
	\$	\$		\$
	\$	\$		\$
	\$	\$		\$

**Real Property Claimed** (*I understand that if I wish to claim more than one parcel, I must attach additional pages setting forth the following information for each parcel claimed as exempt.*)

Street Address	Estimated Value Of Property (What You Could Sell It For)
	\$
County Where Property Located	Township
	No. By Which Tax Assessor Identifies Property
Description (Attach a copy of your deed or other instrument of conveyance or describe the property in as much detail as possible.)	
Name And Address Of Lienholder	Current Amount Owed
	\$
Name And Address Of Lienholder	Current Amount Owed
	\$

(Attach additional sheets for more lienholders.)

9. I wish to claim the following items of health care aid necessary for ☐ myself ☐ my dependents. (wheelchairs, hearing aids, etc.)

Item	Purpose

10. I wish to claim the following implements, professional books, or tools (not to exceed \$750.00), of my trade or the trade of my dependent. I understand such property purchased within ninety (90) days of this proceeding is not exempt.

Item	Estimated Value (What You Could Sell It For)	What Business Or Trade Used In
	\$	
	\$	
	\$	

11. I wish to claim the following life insurance policies whose sole beneficiaries are my spouse and/or my children as exempt.

Name Of Insurer	Policy Number	Beneficiary(ies)

12. I wish to claim as exempt the following compensation which I received for the personal injury of myself or a person upon whom I was dependent for support or compensation which I received for the death of a person upon whom I was dependent for support. I understand that this compensation is not exempt from claims for funeral, legal, medical, dental, hospital or health care charges related to the accident or injury which resulted in the payment of the compensation to me.

Amount Of Compensation \$	Method Of Payment Lump Sum Or Installments (If Installments, State Amount, Frequency And Duration Of Payments)
Location Of Compensation	

13. I wish to claim my individual retirement accounts and individual retirement annuities (IRA's) that are listed below.

Name Of Custodian Of IRA Account	Account Number

14. The following is a complete list of persons or businesses that have judgments for money against me.

\_\_\_\_\_

15. The following is a complete listing of my property which I do **NOT** claim as exempt.

Item	Location	Estimated Value
		\$
		\$
		\$

16. I certify that the above statements are true.

Date	Signature Of Judgment Debtor/Attorney For Debtor (Defendant)

17. A copy of this Motion was served on the judgment creditor (plaintiff) by: ☐ delivering a copy to the judgment creditor (plaintiff) personally ☐ delivering a copy to \_\_\_\_\_, the judgment creditor's attorney. ☐ depositing a copy of this Motion in a post-paid properly addressed envelope in a post office, addressed to the judgment creditor (plaintiff) at the address shown on the notice of rights served on me. ☐ depositing a copy of this motion in a post-paid properly addressed envelope in a post office, addressed to the judgment creditor's (plaintiff's) attorney at the following address: \_\_\_\_\_

Date	Signature Of Judgment Debtor/Attorney For Debtor (Defendant)

Address And Phone Number Of Attorney For Debtor (Defendant)

**UNITED STATES DISTRICT COURT**  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

File No.

\_\_\_\_\_ DIVISION

Judgment Creditor (Plaintiff)

**VERSUS**

Judgment Debtor (Defendant)

**MOTION TO CLAIM  
EXEMPT PROPERTY  
(CONSTITUTIONAL EXEMPTIONS)**

G.S. 1C-1602

I, the undersigned, am a citizen and resident of North Carolina and move to claim my constitutional exemptions and ask to have the following property set aside as exempt. I understand that I can claim these exemptions even though I have waived my rights to statutory exemptions.

1. I wish to claim as exempt my interest in the real property (*land and anything permanently attached to the land*) described below. I understand that my total interest claimed in this real property may not exceed \$1,000.

Street Address Or Description Of Real Property

Name(s) Of Owner(s) Of Property

County Where Property Located

No. By Which Tax Assessor Identifies Property

Name(s) And Address(es) Of Lienholders

Estimated Value Of Property (What You Think You Could Sell It For)

Current Amount Owed On Lien

2. I wish to claim as exempt the personal property (*any property that is not real property*) described below. I understand that I am entitled to my interest in personal property not exceeding \$500.

**Item(s) Of Property**

**Fair Market Value  
(What You Could Sell It For)**

**Amount Of Lien Or  
Security Interest**

3. I certify that the above statements are true.

Date

Signature Of Judgment Debtor (Defendant)

4. A copy of this Motion was served on the judgment creditor (plaintiff) by: ☐ delivering a copy to the judgment creditor (plaintiff) personally. ☐ delivering a copy to \_\_\_\_\_, the judgment creditor's attorney. ☐ depositing a copy of this Motion in a post-paid properly addressed wrapper in a post office, addressed to the judgment creditor (plaintiff) at the address shown on the notice of rights served on me. ☐ depositing a copy of this Motion in a post-paid properly addressed wrapper in a post office, addressed to the judgment creditor's (plaintiff's) attorney at the following address: \_\_\_\_\_

Date

Signature Of Judgment Debtor/Attorney For Debtor (Defendant)

Address And Phone No. Of Attorney For Debtor (Defendant)

	)	
	)	
Plaintiff-Judgment	)	
Creditor,	)	
vs.	)	
	)	
	)	<b>MOTION FOR FINAL EXECUTION</b>
	)	<b>AND ORDER TO PRECLUDE EXEMPT</b>
	)	<b>PROPERTY RIGHTS</b>
Defendant-Judgment	)	
Debtor.	)	

1. That Judgment was entered on \_\_\_\_\_ in favor of the Judgment Creditor against the Judgment Debtor for recovery of the sum of \$ \_\_\_\_\_ plus interest and costs.
2. That Judgment in favor of the Judgment Creditor has not been satisfied, vacated, or reversed.
3. That Judgment Creditor is the only judgment creditor of the Judgment known to the Judgment Creditor.
4. That Notice of Right to Have Exemptions Designated was duly issued by this Court on \_\_\_\_\_ and that a copy of said Notice together with Schedules of Debtor's Property and Request to Set Aside Exempt Property were served upon the Judgment Debtor according to law.
5. That the Judgment Debtor has failed to respond within the time allowed and that his failure to respond should be considered a waiver of his right to have property set aside as exempt from execution of judgment.

Attorney for Judgment Creditor

Notary Public

My commission expires \_\_\_\_\_.

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

	)	
	)	
	)	
Plaintiff-Judgment	)	
Creditor,	)	
	)	
vs.	)	
	)	
	)	<b>ORDER FOR FINAL EXECUTION</b>
	)	<b>AND PRECLUSION OF EXEMPT</b>
	)	<b>PROPERTY</b>
Defendant-Judgment	)	
Debtor.	)	

THIS MATTER coming on to be heard and being heard before the undersigned Judge of the United States District Court for the Western District of North Carolina upon Judgment Creditor's Motion for an Order of Final Execution in this matter; and

IT APPEARING to the Court that Judgment Debtor has been served with copy of the Judgment together with a copy of the Notice of Right to Have Exemptions Designated and Schedule of Debtors Property and Request to Set Aside Exempt Property and that the Judgment Debtor has failed to file a Schedule of Debtors Property and Request to Set Aside Exempt Property and has failed to request a hearing to set aside exempt property or otherwise respond within the time allowed. The Court, therefore, finds that the Judgment Debtor has had a reasonable opportunity to assert the exemptions provided by law and that the Judgment Debtor's failure to respond should be considered a waiver of his right to have property set aside as exempt from the execution of the Judgment in this case.

IT IS, THEREFORE, ORDERED that Judgment Debtor is precluded from having any of his property set aside as exempt from Judgment in this case.

IT IS FURTHER ORDERED that a final execution be issued by the Clerk of this Court for the Collection of the Judgment in this case.

THIS THE \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

File No.

Name And Address Of Plaintiff

WRIT OF EXECUTION

VERSUS

G.S. 1-313(1); 1C, Art. 16

Name And Address Of Defendant 1

Name And Address Of Defendant 2

To The United States Marshal:

Judgment in favor of the \_\_\_\_\_ was rendered in this case against the \_\_\_\_\_. By terms of that judgment the following sums are now due:

Principal Due As Of Today.....

\$

Plus Dollar Amount Of Interest Due As Of Today.....

\$

Plus Court Cost Due As Of Today.....

\$

Plus Other.....

\$

Total Due As Of Today.....

\$

Plus, interest on the principal at the rate set out below shall be due from the date shown below. U.S. Marshal's fee occasioned by this writ, see 28 U.S. C. Section 1921. Post-judgment interest is computed on the principal at the legal rate from the date shown below:

Date From Which Interest Due	Date Of Judgment	County To Which Issued	File No.
Rate Of Interest	Contract Rate Legal Rate	Daily Interest Rate	Date And Time Of Docketing

You are commanded to satisfy the judgment:

out of the personal property of the defendant, and if sufficient personal property cannot be found, then out of the real property belonging to the defendant on the day the judgment was entered on the docket of this court as shown above or any time after that date.

except as to property of the defendant set off as exempt (a list of which is attached) out of the personal property of the defendant within your district, and if sufficient personal property cannot be found, then out of the real property belonging to the defendant on the day the judgment was docketed in this court as shown above or any time after that date.

Additional Order For Satisfying Judgment

This Writ Must Be Returned Within 90 Days  
After Date of Issue.

Date Issued

Name And Address Of Creditor's Attorney

Signature

☐ Deputy Clerk

(Over)

# RETURN OF EXECUTION

This Writ Of Execution was served as follows:

☐ by collecting the amount owed.

☐ by levying on and selling the property of the defendant described below and returning to the court the balance shown below.

Date Of Levy	Description Of Property Levied On And Sold

Total Sum Collected	Amount Retained As Commission	Amount Retained For Expenses	Balance Returned
\$	\$	\$	\$

☐ I did not serve this Writ Of Execution because:

☐ I did not locate property on which to levy.

☐ Other: (specify)

Service Fee Paid	Date Received	Name of U.S. Marshal
\$		
Paid By	Date Executed	County
	Date Of Return	U.S. Deputy Marshal Making Return